

### **Remarks**

I have carefully reviewed the Office Action of April 24, 2007 by Examiner Underwood. The last limitation of claim 7 has been amended to read similarly to the last limitation of claim 2. Thus, both claims 2 and 7 now require, in combination with the other recited features, the following control system:

“a control system positioned at the rear of the frame and comprising a control handle configured to be gripped and manipulated by a standing operator walking behind the frame during operation of the loader, wherein the control system is located sufficiently close to the rear of the frame and the rear of the frame is configured to permit the standing operator walking behind the frame to comfortably reach and operate the control system with the operator's arms being bent at the elbow”.

Both claims 2 and 7 are allowable by virtue of this limitation for the reasons that will be noted below. Thus, the rejections of claim 2 are being respectfully traversed as set forth below. Claim 7 is allowable for the same reasons pertaining to the traversal of claim 2.

### **Reply to Examiner's Requirement for Information**

In the Information Disclosure Statement submitted by the Applicant with the RCE, the Examiner has required that the publication dates of the last five references listed on the IDS be provided. The Applicant replies as follows to this Requirement:

- **Photograph of Bobcat 463 SSL** - This is a photograph of a Bobcat 463 Skid Steer Loader (SSL) and is not a printed publication. Thus, there can be no publication date per se since it is not a publication. The issue is whether the loader depicted in the photograph is prior art to the above-identified application. At the time the IDS was submitted with the RCE, the Applicant did not know when the loader depicted and sold in this photograph would have been

manufactured and sold and thus was unable to admit whether the loader depicted in the photograph was prior art or not.

After investigating further, the Applicant is still unable to admit that the loader depicted in this photograph is prior art. Attached hereto as Exhibit A is information obtained from the Bobcat website that indicates when its skid steer loaders were first produced. Exhibit A indicates that the Model 463 was first produced in 2001. However, at least independent claims 2 and 7 are entitled to the effective filing date of April 27, 2000 of Serial No. 09/560,308, the first application in the chain of applications leading to the above-identified application. Accordingly, the Model 463 Bobcat loader still does not appear to be prior art to the above-identified patent application.

The Examiner should note that the possibly relevant features of the Model 463 Bobcat loader appear to be found in other references of record that are prior art to the above-identified patent application.

- **Photograph of Bobcat 864 SSL** - This is a photograph of a Bobcat 864 Skid Steer Loader (SSL) and is not a printed publication. Thus, there can be no publication date per se since it is not a publication. The issue is whether the loader depicted in the photograph is prior art to the above-identified application. At the time the IDS was submitted with the RCE, the Applicant did not know when the loader depicted and sold in this photograph would have been manufactured and sold and thus was unable to admit whether the loader depicted in the photograph was prior art or not.

After investigating further, the Applicant is still unable to admit that the loader depicted in this photograph is prior art. Attached hereto as Exhibit B is information obtained from the Bobcat website that indicates when its tracked loaders were first produced. Exhibit B indicates that the Model 864 was first produced in 1999. It is possible that the Model 864 qualifies as prior art depending upon when the models first produced in 1999 were first sold, or first offered for sale, etc., i.e. whether or not they were first sold or offered for sale prior to April 27, 1999. However, the Applicant is not sure of the precise date on

which such Model 864 loaders were first sold or offered for sale. Accordingly, the Applicant still does not know whether or not the Model 864 Bobcat loader is prior art to the above-identified patent application.

The Examiner should note that the possibly relevant features of the Model 864 Bobcat loader appear to be found in other references that are prior art to the above-identified patent application.

- **Bobcat 322 Compact Excavator Brochure** - After investigating further, the Applicant still does not know the publication date of the Bobcat 322 excavator brochure. Attached hereto as Exhibit C is information obtained from the Bobcat website that indicates when its excavators were first produced. Exhibit C indicates that the Model 322 was first produced in 2003. However, at least independent claims 2 and 7 are entitled to the effective filing date of April 27, 2000 of Serial No. 09/560,308, the first application in the chain of applications leading to the above-identified application. Accordingly, the Model 322 Bobcat excavator brochure is unlikely to predate the above-identified effective filing date of claims 2 and 7.

The Examiner should note that the possibly relevant features of the Model 322 Bobcat excavator brochure appear to be found in other references that are prior art to the above-identified patent application.

- **Finn Skid Steer 250 Brochure** - The Finn Skid Steer brochure, used by the Examiner as a primary and secondary reference in rejecting at least some of the claims, carries a publication date of 2000. After investigating further, the Applicant cannot date this publication more precisely and thus is still unable to admit whether or not this brochure is prior art. Since the Examiner has not established that this brochure was published prior to the effective filing date of the above-identified patent application, and since the Applicant has no more precise information as to the actual publication date of this brochure, this brochure does not appear to be usable as a reference.

The Examiner should note that the features in the Finn Skid Steer brochure, upon which he appears to rely, appear similar to those found in other references that are prior art to the above-identified patent application, such as in Rubber-Over-Tire-Tracks and the Ramrod Taskmaster brochure. The Applicant admits that at least the Model 900T Ramrod Taskmaster as shown in this brochure is prior art as noted below.

- **Ramrod Taskmaster Brochure** - After investigating further, the Applicant cannot date this publication and thus is still unable to admit whether or not this entire brochure is prior art. However, the Applicant now has information that the Model 900 T Taskmaster product shown in this brochure was sold more than one year prior to the effective filing date of any of the claims of the above-identified patent application and thus qualifies as prior art to that extent. Accordingly, the Applicant is now in a position to admit that the Model 900 T Taskmaster loader shown in the Ramrod Taskmaster brochure is prior art to the above-identified invention.

### **Comments Regarding Rubber-Over-Tire-Tracks**

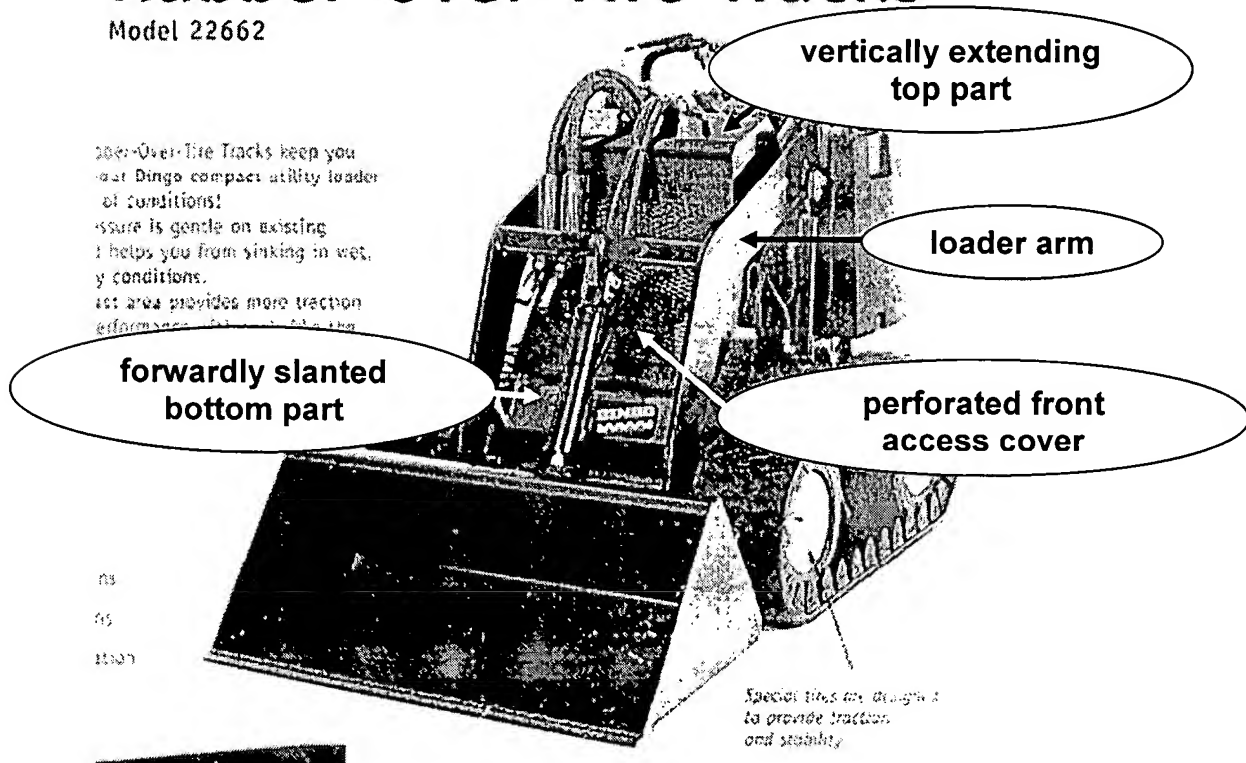
The loader depicted in the Rubber-Over-Tire-Tracks has a pair of loader arms that nest down and around the sides of structure that could arguably be construed, and has been argued by the Defendant in the concurrent litigation to comprise, at least part of an engine hood or shroud. The large photograph from the front page of the Rubber-Over-Tire-Tracks brochure has been reproduced below. The structure that could be construed as an engine hood or shroud is the upstanding structure that comprises **a vertically extending top part** that begins immediately behind the downward bend in the loader arms along with **a forwardly slanted bottom part** that lies generally within and behind the slanted lower portions of the loader arms. These two parts, namely the vertically extending top part and the forwardly slanted bottom part, have **a perforated**

**front access cover.** The following reproduction of the large photograph from the Rubber Over-Tire-Tracks brochure has been labeled to show these parts.

# Rubber-Over-Tire Tracks

Model 22662

Rubber-Over-Tire Tracks keep you out of mud and ruts. They are gentle on existing roads and help you from sinking in wet, muddy conditions. The special tread area provides more traction and better performance.



## Traversal of Rejections Using Woerner as the Primary Reference

Certain claims of the application, including independent claims 2 and 7, have been rejected by the Examiner using Woerner as the primary reference. This rejection is respectfully traversed.

Woerner is a sod-laying machine that involves **supporting a large roll of sod above the ground** and letting the sod unroll onto the ground as the machine travels over the ground. Woerner's machine is tailored to meet the needs of this job and it would not have been obvious to modify Woerner as suggested by the Examiner to perform a radically different job, i.e. one using a ground grooming or working attachment connected to the front end of the loader arm(s).

First, in Woerner, there is a small engine 20 set at the very rear of the frame and purposely positioned to be low on the frame to help keep the center of gravity of the machine quite low. See Fig. 2 of Woerner, which shows **engine 20 as being to the rear of and well below any portion of the pivotal arms 30**. This low placement of engine 20 is also emphasized in the text of Woerner as being important to the invention at Col. 7, Line 66 - Col. 8, Line 4, which reads as follows:

“One principal feature of the present invention is that **machine 10 has a low center gravity** since tracks 16 are spaced apart from one another, and **because motor 20 is adapted to a lower portion of frame 12**. Thus, a roll of sod can be transported and laid upon the earth on an inclined surface without risking tipping machine 10 and without requiring outriggers.” (Emphasis Added)

Thus, even assuming it would have been obvious to one of ordinary skill in the art to modify Woerner to put a hood or shroud around engine 20, this still would not cause the arms 30 to be “located beneath an upper portion of the engine hood or shroud when the loader arm is in its lowermost position” as called for in claim 2. Arms 30 would still be above and in front of any such hood or shroud. Claim 2 should be allowed over Woerner for this reason alone.

In addition, in performing the function for which Woerner is designed, Woerner teaches **positioning the sod roll between the tracks of the machine and above the ground**. For example, Woerner states:

“One key feature of the present invention is that the machine has a low center of gravity due to the large spacing of the driving tracks. Consequently, when **a roll of sod which is positioned between the tracks** and dispensed therefrom the machine is not easily subjected to tipping on hills. When unrolling the rolls of sod, **the elevating mechanism avoids tearing the sod roll by positioning the outer surface of the roll of sod slightly above the earth** such that the tension in the sod roll does not exceed the tensile strength of the sod roll. **By positioning the roll of sod slightly above the surface of the earth, buckling is also avoided.**” (Emphasis Added) Col. 3, Lines 32-43.

The Examiner now proposes that these key and critical requirements of Woerner be thrown out the window and that Woerner now be adapted to use a ground grooming or working attachment like in Finn Skid Steer, i.e. an attachment like a bucket that is shown well forward of the frame and the ground engaging wheels and that would inherently have to engage the ground. Woerner's structure must not allow the roll to engage the ground and the placement of his pivotal arms 30 and hydraulic cylinders 40 are designed to prevent this. This **teaches away** from using Woerner to support a ground grooming or working attachment that **must** engage the ground. Accordingly, it would not have been obvious to one of ordinary skill in the art to modify Woerner as suggested by the Examiner because to do so would have destroyed Woerner's ability to perform the purpose for which Woerner was designed. A modification which destroys the ability of a reference to function as intended cannot be said to be obvious.

Accordingly, the rejections of the claims in which Woerner is used as a primary reference and is modified to become a loader should be withdrawn by the Examiner.

### **Traversal of Rejections Using Ride-On Loaders as the Primary References**

All of the other rejections are based ultimately on using a ride-on loader as the primary reference, whether such loader is the Finn Skid Steer, the Rubber Over-Tire-Tracks, or Whiffin. All such rejections are respectfully traversed because they all lack the following limitation of the claims:

"a control system positioned at the rear of the frame and comprising a control handle configured to be gripped and manipulated by a standing operator walking behind the frame during operation of the loader, wherein the control system is located sufficiently close to the rear of the frame and the rear of the frame is configured to permit the standing operator walking behind the frame to comfortably reach and operate the control system with the operator's arms being bent at the elbow".

First, it stands to reason that a machine that provides a platform on which an operator rides to operate the machine has to locate the controls high enough on the frame of the machine so that such a standing ride-on operator can comfortably reach and operate the controls. When such an operator steps off the platform and then attempts to walk behind the loader, two things happen. He or she is located much lower than before and usually behind the previous position. Even if such an operator could theoretically reach the controls, they would not be able to do so with their arms being bent at the elbow to allow the operator to comfortably reach and operate the control system. At best, the operator's arms would be outstretched and straight and it would be dangerous to operate the loader in this fashion.

This is recognized in the industry by the fact that manufacturers of ride on loaders, including the manufacturers of Finn Skid Steer, Rubber Over-Tire-Tracks, and Ramrod Taskmaster, all specifically warn the operator NOT TO OPERATE THE RIDE ON LOADER UNLESS BOTH FEET ARE PLACED ON THE PLATFORM. Attached as Exhibits D, E and F are the respective Operator's Manuals for these machines. Note the following from these Manuals:

From Page 7 of the Finn Skid Steer Manual appended hereto as Exhibit D:



**WARNING:** Always keep both hands on the grip handles and both feet on the operator's platform whenever operating the machine.

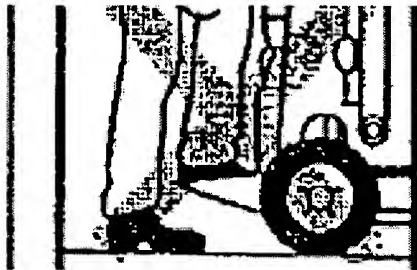
From Page 17 of the Toro Dingo 320-D Manual appended hereto as Exhibit E (i.e. the Manual of the Loader shown in Rubber Over-Tire-Tracks):

**HOW TO AVOID THE HAZARD**

- Do not move any of the control levers unless standing with both feet on the platform and with hands holding the handles.



From Page 31 of the Ramrod Taskmaster Manual appended hereto as Exhibit F (illustrating part of the text of a warning decal placed on the actual loader):



6. Do not operate any of the control levers including auxiliary power take-off unless you are standing with both feet on the platform and firmly holding the grip handles.
7. Do not place feet under the platform.

Clearly, ride-on-loaders simply do not permit the safe operation of the loader from a position in which the operator is on the ground and is walking behind the loader. This is due to the strained and stretched position of the operator's arms in reaching the control system. The control system is not designed to be located close enough to the rear of the loader and the rear of the loader is not configured "to permit the standing operator walking behind the frame to comfortably reach and operate the control system with the operator's arms being bent at the elbow". This is acknowledged by the manufacturers of such equipment who warn against ever attempting to operate the loader without both feet firmly planted on the riding platform. Accordingly, the remaining rejections of the claims based on any of the ride-on loaders, whether Finn Skid Steer, Rubber Over-Tire-Tracks, or Whiffin, should be withdrawn.

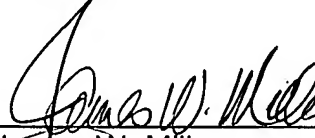
#### Summary

This Amendment places the application into condition for allowance. It is

respectfully requested that this application be allowed and sent to issue.

October 24, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James W. Miller", written over a horizontal line.

James W. Miller  
Registration No. 27,661  
Suite 1960 Rand Tower  
527 Marquette Avenue  
Minneapolis, MN 55402  
Telephone (612) 338-5915